

OFFICE OF ADMINISTRATIVE HEARINGS STATE OF MINNESOTA

FOR THE CITY OF SAINT PAUL

In the Matter of the License Application of
Glen E. Berhow d/b/a G.B. Core, Inc.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha at 9:30 a.m. on October 12, 2000 in Room 220, St. Paul City Hall, Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota.

Virginia D. Palmer, Assistant St. Paul City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota, appeared on behalf of the Office of License, Inspections and Environmental Protection (LIEP). James A. Yarosh, Attorney at Law, 1300 Washington Square, 100 Washington Avenue South, Minneapolis, Minnesota, 55401 appeared on behalf of the Applicant, Glen E. Berhow, d/b/a G.B. Core, Inc.

The record closed on November 7, 2000 with the receipt with the last post-hearing submission.

NOTICE

This Report is a recommendation, not a final decision. The City Council will make the final decision in this matter, after its review of the record. The City Council may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation contained herein. The Council will consider the evidence in this case and the Administrative Law Judge's Recommendation, but will not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. The Licensee will have an opportunity to present oral or written arguments regarding its position on the Recommendation of the Administrative Law Judge in the application of the law or interpretation of the facts and may present argument related to its position. Parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, Minnesota 55102 to ascertain when the Council will consider this matter and procedures for filing exceptions or presenting arguments.

STATEMENT OF ISSUE

The issue in this matter is whether the City should grant a Recycling Processing Center License to the Applicant, Glen E. Berhow, d/b/a G.B. Core, Inc.:

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. G.B. Core, Inc. is a company that purchases used engines, transmissions and catalytic converters and sells them to remanufacturing companies throughout the world.^[1]

2. The company has been in business for over 12 years and has its corporate headquarters in Green Bay, Wisconsin.^[2]

3. G.B. Core has operated at locations in St. Paul for several years receiving goods for inspection, processing the goods and shipping them to its Green Bay headquarters.^[3]

4. In the Fall of 1999, G.B. Core purchased property at 500 Bush Street in St. Paul and moved its business operations to that site.^[4]

5. The property on which the business is located is zoned I-1 Industrial, and would allow the collection and storage of auto parts, but would not permit any type of auto salvage.^[5] G.B. Core does not operate a salvage operation.

6. The existence of the business first came to the attention of St. Paul Office of License, Inspection and Environmental Protection ("LIEP") when they investigated a complaint concerning alleged auto salvage activity on the street in front of the property. The zoning administrator advised those present that they could complete the operation but that no additional activity would be allowed in the building or surrounding property until zoning, licensing and building recertification issues were resolved.^[6]

7. The Applicant was advised in a letter dated December 2, 1999 that it could not operate until a license was issued.^[7] After the Applicant advised LIEP that the nature of the business did not include any type of auto salvage, staff of LIEP advised the Applicant that it was a practice of the City to allow a business to operate while a license application was pending.^[8] On December 10, 1999, Lawrence Zangs of LIEP sent a letter to Glen Berhow, the President of G.B. Core stating that G.B. Core needed to obtain a business license for a recycling action center. Zangs indicated that the property was appropriately zoned for G.B. Core's use.^[9] LIEP determined that a Recycling Center License was the type of St. Paul City Ordinance license, which best fit G.B. Core's business.^[10]

8. The Applicant submitted an application for the Recycling Center License on January 3, 2000.

9. The Applicant was notified by letter dated March 9, 2000 that LIEP still needed some information for the license application, including a copy of the lease or purchase agreement for the property, a copy of the State of Minnesota tax identification number certificate, and a signed copy of conditions being proposed for the license. The letter also included the following statement: "If you wish to continue to operate your business, you must submit the aforementioned requirements by March 20, 2000."^[11]

10. The Applicant agreed to the placement of the following five conditions on the license:

- (1) The collection and processing of parts, for shipment, shall be conducted inside the building.

- (2) The business operation at this licensed premise should not be in the manner of an auto salvage use.
- (3) There shall be no exterior storage.
- (4) The handling and storage of vehicle fluids, batteries, etc. shall be in accordance with the Ramsey County waste regulations.
- (5) The dumpster must be stored on the property and not in the alley, street, or on the public sidewalk.^[12]

11. A copy of these license conditions was signed by the Applicant on March 13, 2000, and the license was considered complete and proceeded forward.

12. The Applicant agreed to a sixth condition after a public hearing, which limits the business hours of operation from 7:00 a.m. to 7:00 p.m. The sixth condition was signed on August 17, 2000.^[13]

13. A Recycling Collection Center License is a Class N License which requires notice of the license application to be sent to properties within 300 feet of the proposed location, and the District Council or neighborhood organization, and allow them an opportunity to object to the license.^[14]

14. Notice was sent by LIEP to the properties and the District Five Planning Council. LIEP received several objections from property owners and the District Five Planning Council.^[15] A hearing was scheduled before a Legislative Hearing Officer on May 10, 2000, and then rescheduled and held on August 17, 2000.^[16]

15. The Office of LIEP summarized the licensing application for the Legislative Hearing Officer, and recommended issuance of the license with six conditions. These were the five conditions initially signed by Applicant and the additional sixth condition added after the hearing on August 17, 2000.^[17]

16. Objections were raised at the hearing to issuance of the license by the District Five Planning Council based upon the following allegations: 1) that the Applicant was operating before the license was issued; 2) that the Applicant was illegally disposing of hazardous materials; 3) that the Applicant was doing work on the building without permits; and, 4) that engine and auto parts were being left outside of the building, in violation of one of the proposed conditions. A neighbor objected to issuance of the license because the business was operating without a license, was doing building without permits and was illegally disposing of hazardous materials.^[18]

17. City Inspector Christine Schweinler, who determined no violations existed, investigated the objections and complaints. Schweinler referred the hazardous material complaint to Ramsey County. Typically, if there were a violation of County environmental regulations, Schweinler would hear back from the County. With respect to G.B. Core's operation, Schweinler never heard back from the County.^[19]

18. Mike Cimmaglio, an Inspector from the Ramsey County Department of Public Health, Environmental Health Section, visited G.B. Core's property. Mr. Cimmaglio informed the Applicant about the hazardous waste management plan which requires a business to store and label used oil containers according to the inspection reports and requires regular reporting by the business.^[20]

19. G.B. Core, at the suggestion of the City's fire inspector, placed the drums of used oil it collects in the ordinary course of business on a platform so as to avoid any possibility that oil could spill on the floor.^[21]

20. Neither Schweinler nor Zangs were aware of any complaints about the Applicant at any prior addresses.^[22]

21. Before alteration to the building, the Applicant asked the City whether it needed a building permit. The City informed the Applicant that no permit was necessary for the type of alterations it intended to make. After the August 17, 2000 public hearing concerning the license, the Applicant checked with a City building inspector to assure himself that he would not need to obtain a building permit. The building inspector informed the Applicant that to be on the safe side he should obtain a minor building permit. G.B. Core obtained the permit. The Applicant was not charged with any type of violation of building permit requirements.^[23]

22. With respect to the auto parts and other debris being left outside the building, Schweinler, upon her visit to the property, did not observe any auto parts or garbage outside of the building.^[24]

23. It is common knowledge among City officials that illegal dumping of garbage is a problem in that area of Saint Paul. The Applicant's employees maintain clean premises and appropriately dispose of garbage dumped on its property.^[25]

24. After a review by the relevant departments within the City, the City staff recommended approval of G.B. Core's recycling Collection Center License.

25. The Legislative Hearing Officer sent the matter to the City Council on September 6, 2000 with a recommendation that the license be issued with the six proposed conditions. The City Council sent the matter to be heard before an Administrative Law Judge from the Office of Administrative Hearings.^[26]

26. Notice of the Hearing was sent to the Applicant and to a number of neighborhood groups, including the District Five Planning Council.

27. The LIEP staff continued to recommend issuance of the license with the conditions proposed, and which Applicant had agreed to. The LIEP staff determined that they determined the appropriate type of license for the business Applicant intended to operate, and that the Recycling Processing Center License is the closest licensure appropriate for this business.

28. Bruce Sylvester, a paid staff person for the District Five Planning Council, and Troy Trooien, whose home is directly adjacent to the property, both testified at the hearing in opposition to the license. The opposition is consistent with the previous opposition submitted to the Legislative Hearing Officer. Mr. Trooien further recommended a number of additional conditions, including the following:

- (1) Keeping a cover over the scrap metal dumpster;
- (2) Requiring the Applicant and all employees to undergo training in the storage and disposal of hazardous waste;
- (3) Making unannounced inspections by the neighborhood council;

- (4) Requiring the Applicant to post a performance bond;
- (5) Requiring the Applicant to construct a fence around the eastern portion of the property; and
- (6) Requiring the Applicant to keep the dumpster locked during non-business hours.^[27]

29. John Londino, a neighbor to the property, also testified in opposition to the license. He is concerned that the business is not operating within the hours set forth in the conditions. He is further concerned that the trucks delivering auto parts to the property have blocked the road on at least two occasions per month sometimes for hours at a time.^[28]

30. The neighbors registering complaints do not object to G.B. Core's use of the property, but believe that the Applicant is of unfit character.^[29]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the City Council of the City of St. Paul have jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and St. Paul Legislative Code § 310.05.

2. The Notice of Hearing was proper in all respects and the City has complied with all other substantive and procedural requirements of law or rule. The City provided Notice of the Hearing to the property owners and neighborhood organizations for the area in which the business is located.

3. The City has authority to grant licenses and the Applicant has not challenged its determination that a Recycling Collection Center License is the correct license for this business.

4. The City may impose reasonable conditions on a business license for the purpose of promoting public health, safety and welfare.^[30]

5. The Applicant has agreed to six conditions that were recommended by LIEP.

6. The Applicant has the burden of showing that he is entitled to issuance of a license. The Record supports that the property in question is properly zoned for the type of business conducted by the Applicant; that all the necessary approvals have been received from the City; and, the Applicant has agreed to conditions on the license to insure compliance of local, county, and state statutes, rules and regulations, as well as to deal with some of the concerns voiced by the neighbors. The Applicant has met its burden of proof.

7. The Record does not support the District Five Council's objections that the Applicant is unfit under St. Paul Legislative Code Section 310.06(b).

8. The suggested condition by Mr. Trooien that a cover be kept over the scrap metal dumpster is a reasonable one and should be considered by the City Council as an added condition to the license.

9. The concern expressed by Mr. Londino about trucks blocking the street is a reasonable concern. Adding a condition requiring the Applicant not to permit trucks delivering parts to the business to block the street preventing use by through traffic should be considered by the City Council as an added condition to the license.

10. The foregoing conclusions are made for the reasons set forth in the Memorandum which follows, is hereby incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the St. Paul City Council GRANT the Application by Glen E. Berhow d/b/a G.B. Core's Application for a Recycling Processing Center License with the conditions as set forth herein.

Dated this 19th day of December, 2000.

PHYLLIS A. REHA
Administrative Law Judge

Reported: Taped

NOTICE

It is respectfully requested that the City Council provide a copy of its final decision to the Administrative Law Judge by first class mail.

MEMORANDUM

A municipality can not deny an application for a license arbitrarily or unreasonably.^[31] Under the Saint Paul City Code, where the application for the grant of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the Director shall issue such license in accordance with law.^[32] The Office of License, Inspections and Environmental Protection is recommending issuance of the license with conditions, based upon the review of the application, and approvals by zoning, licensing, fire and environmental health. The evidence establishes that the Applicant meets all the requirements of law as demonstrated by the Office of LIEP's recommendation to approve the license.

The matter was referred for hearing before an Administrative Law Judge based upon the objections of the District Five Planning Council and other neighbors who objected to the issuance of the license to the Applicant. The concerns of the neighbors and the District Five Planning Council is not the nature of the business, but the character of the Applicant, who they believe "is not a person of the good moral character or fitness required to engage in a license activity, business or profession."^[33] They also believe that the Applicant has engaged in a "pattern or practice of conduct or failure to comply with laws reasonably related to the license activity or from which an inference or lack of fitness or good character may be drawn."^[34] They assert that the Applicant has "failed to comply with any conditions set forth in the license, or set forth in the resolution granting or renewing the license."^[35] They further assert that "the license activity has created a serious danger to the public health, safety or welfare."^[36] Finally, they claim that the "Applicant has materially changed or permitted a material change in the design, construction or configuration of the license premises without... having first obtained the proper building permits from the City."^[37]

Most of the concerns voiced by the neighbors or planning council representative are in the nature of unsubstantiated allegations. These can not be the basis for denying the Applicant a license. G.B. Core learned for the first time in December of 1999, that the City of Saint Paul required it to obtain a Recycling Collection Center License for its new location, despite having operated in the City of Saint Paul for several years without any complaints. Upon learning that it needed a license, G.B. Core complied with the City's request and accepted the placement of six conditions on its license. G.B. Core has been operating continuously since it first learned of the licensing requirement. The evidence shows that City policy allows businesses requiring a license to continue to operate while applying for a license. In fact, Laurence Zengs testified that the City had a difficult time deciding what type of license, if any, G.B. Core needed to operate at the 500 Bush Street location. After consulting with a senior license inspector, the Office of LIEP determined that the licensing status of G.B. Core's business would require a Recycling Collection Center License as it was the closest fit to the Applicant's business operations. On December 10, 1999, the City notified the Applicant of its licensing status; and, although the letter indicated that G.B. Core could not operate its business until it received its Recycling Collection Center License, Christine Schweinler stated that the inclusion of the statement in the letter was in error because the City does allow a business to continue to operate while it is in the process of obtaining a license.^[38] Schweinler further testified that applying for and receiving a business license takes time and that the City gives businesses an opportunity to obtain a license and to comply with any required conditions.^[39] Thereafter on January 3, 2000, the applicant applied for the Recycling Collection Center License and agreed to five conditions. The applicant then agreed to a sixth condition after a public hearing in August of 2000.

Prior to the public hearing, the City received two letters from citizens with concerns about G.B. Core's business. Specifically, the residents concerns included: 1) the business currently seems to be operating illegally without a license; 2) the business has disposed of hazardous materials (oil and fluorescent bulbs) in an illegal manner; 3) the Applicant has done work on its building without proper building permits; and, 4) engine and auto parts have been left lying outside of the building.

Ms. Schweinler investigated these complaints and determined that no violations existed. In fact, Schweinler did not notice any debris outside of the building when she visited. The City acknowledges that illegal dumping of garbage frequently occurs in the area and the company testified that the applicant's employees clean up and appropriately dispose of garbage that has been dumped on its property.

With respect to the concerns of hazardous materials, Schweinler referred the complaint to Ramsey County and never heard back. She indicated that had there been a violation of County regulations she would have heard something from the County.^[40] In fact, an inspector from the Ramsey County Department of Public Health and Environmental Health Section has visited the property and informed the Applicant that it appropriately handles hazardous wastes.

With respect to the complaint concerning the building permit, this matter was referred to another department within the City. The City has not issued any violations of building permit requirements. The Applicant did affirmatively contact the City Building Permit Department who informed the Applicant that it did not need a building permit to make the alterations to its building. Despite this advice, the Applicant did obtain a minor building permit for construction at the site. Based on these facts, it can not be determined that the Applicant has failed to comply with any conditions set forth in the license, or that its activities have created a serious danger to the public health, safety or welfare, or that it has done construction on the licensed premises without a proper building permit from the City.

With respect to the issue of lack of fitness or good character, there is no direct evidence in the record to support a finding that Applicant made any misrepresentations of material fact in its Application. Nor have the objectors established any pattern or practice of conduct for failure to comply with laws reasonably related to the license activity, or from which an inference of lack of fitness or good character may be drawn. The concern expressed by the District Five Council that the Applicant has been operating while the license application was pending, might appear to be a technical violation of the ordinance; yet, the testimony from the licensing and zoning inspectors was clear that they were fully aware that the Applicant was operating, and it was not unusual with this type of license to permit operation while the application was pending. In fact, the letter to Applicant dated March 9, 2000 from the Office of LIEP refers to the fact that Applicant can "continue to operate" the business if he submits the required information and the license application is considered active. Ms. Schweinler testified that when she visited the site and observed work being done, she advised the Applicant to call to find out whether a building permit was required. This conduct does not rise to the level of "a pattern or practice of conduct, or a failure to comply with laws reasonably related to the license activity." The evidence demonstrates, that the City allowed the Applicant time to make application and comply with its license. Some of the concerns expressed by the neighbors are that they do not trust the Applicant. This is an insufficient and arbitrary reason for denying the permit. However, several of the concerns voiced by the neighbors and the District Five Planning Council are valid concerns. The Administrative Law Judge has recommended that the City Council consider adding two additional conditions to the Applicant's license. Those are:

- (1) that a cover be kept over the scrap metal dumpster; and
- (2) that the Applicant not permit any trucks delivering parts to the business to block the street and to prevents its use by regular traffic.

The conditions that have been placed upon the Applicant's license and these added conditions presume that the Applicant will be inspected on a regular basis to determine compliance with the conditions on the license and that all relevant rules and regulations related to the operation of the business will be expected. Violations, if any, can then be acted upon through appropriate adverse action through the Office of LIEP. In conclusion, the evidence submitted at the hearing demonstrates that the Applicant is entitled to its Recycling Collection Center License.

P.A.R.

^[1] Testimony of Glen E. Berhow, President, G.B. Core, Inc.

^[2] Id.

^[3] Id.

^[4] Id.

^[5] Exhibit 1, Testimony of Lawrence Zangs.

^[6] Testimony of Lawrence Zangs.

^[7] Exhibit 1.

^[8] Testimony of Berhow, Schweinler and Zangs.

^[9] Exhibit 3.

^[10] Testimony of Schweinler and Zangs.

^[11] Exhibit 5.

^[12] Exhibit 6.

^[13] Id.

^[14] Testimony of Schweinler, Saint Paul Legislative Code Section 310.04 (d)(1).

^[15] Exhibit 8 and 10.

^[16] Exhibit 9 and 12.

^[17] Exhibit 11 and 15.

^[18] Exhibit 15.

^[19] Testimony of Schweinler.

^[20] Testimony of Fred Gonzales.

^[21] Id.

^[22] Testimony of Schweinler and Zangs.

^[23] Testimony of Berhow.

^[24] Testimony of Schweinler.

^[25] Testimony of Schweinler and Gonzales.

^[26] Exhibit 13.

^[27] Testimony of Troy Trooien.

^[28] Testimony of John Londino.

^[29] Testimony of Sylvester, District Five Planning Council.

^[30] St. Paul Legislative Code § 310.06 (c).

^[31] State ex. rel. Rainer vs. City of Minneapolis, 204 N.W. 632, 633 (1925).

^[32] Saint Paul Legislative Code, Section 310.04(d)(1)

- [\[33\]](#) Saint Paul Legislative Code, Section 310.04(d)(1);
- [\[34\]](#) Saint Paul Legislative Code Section 310.06(b)(6)c.
- [\[35\]](#) Saint Paul Legislative Code Section 310.06(b)(5).
- [\[36\]](#) Saint Paul Legislative Code Section 310.06(b)(7).
- [\[37\]](#) Saint Paul Legislative Code Section 310.06(b)(11).
- [\[38\]](#) Testimony of Christine Schweinler.
- [\[39\]](#) Id.
- [\[40\]](#) Testimony of Schweinler.